

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

U.S. Patent Application of:
G. Manderfield, Jr. and Ted L. Beaver

Serial No.: 09/603,255

Filed: June 23, 2000

For: MOLDABLE PLASTIC
CONTAINER WITH
HOURLASS PROFILE

Examiner: N. Eloshway

Group Art Unit: 3727

RECEIVED

AUG 29 2002

TECHNOLOGY CENTER 43700

COPY OF PAPERS
ORIGINALLY FILED

AMENDMENT B**DECLARATION UNDER 37 C.F.R 1.132**

Dear Sir:

I, Christopher Farrell, do hereby declare and state, as follows:

1. I am Manager of Product & Materials Development for Continental Plastic Containers, LLC.
2. I have been actively involved in the field of plastic container research and development for over twenty years working for companies such as Continental Plastic Containers, LLC, and American National Can Company.
3. My responsibility as Manager of Product & Materials Development for Continental Plastic Containers includes research and good knowledge of plastic container materials and construction. Part of that research includes analysis of containers subject to retort and hot fill processes.
4. I am familiar with patents and the United States patent application process.

5. I have reviewed the Examiner's comments in the office action of May 21, 2002, regarding purported anticipation of claim 1 by U.S. Patent No. 5,900,293 (*Zettle*).

6. I have read and considered U.S. Patent No. 5,900,293.

7. I have reviewed the claim language of claim 1 as to be amended in a document entitled Amendment B.

8. With regard to the *Zettle* reference, that patent teaches a very different container having sections which telescope relative to one another. In the *Zettle* reference, the sections 22 and 26 nest concentrically with the upper section 22 surrounding the lower section 26. The middle section 24 folds inside sections 22 and 26 in order to conserve storage space. The sections 22, 24 and 26 are connected by living hinges. Accordingly, the *Zettle* reference does not teach a continuous sidewall in profile i.e., a sidewall with no joints or seams.

9. Moreover, the *Zettle* container has a middle section 24 that is considerably thinner than the remaining sections 22 and 26 of the container. This structure makes the container highly susceptible to permanent deformation during a retort or hot fill process as the middle section 22 is weaker against internal positive and negative pressures than the remaining sections.

10. Yet further, by definition, the *Zettle* container deforms when expanded or collapsed. In a hot fill process, for example, the container would necessarily collapse upon cooling due to the negative pressure that would naturally develop.

11. I have also reviewed the comments in the office action rejecting the claims for purported obviousness in view of various combinations of the following patents:

U.S. Patent No. 5,900,293 (*Zettle*);

U.S. Patent No. 5,996,882 (*Randall*);

U.S. Patent No. D279,550 (*Fortuna*);

U.S. Patent No. D270,814 (*Edwards*); and

U.S. Patent No. 5,865,345 (*Cistone et al.*).

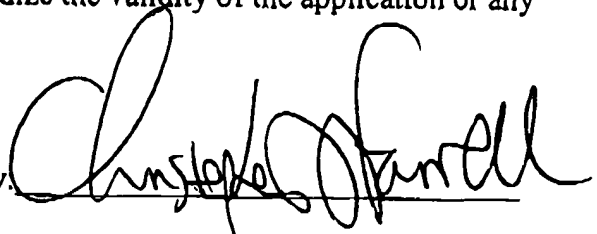
12. I have also reviewed and considered each of the above listed patents. I see no fair teaching or suggestion of a container having a continuous sidewall capable of withstanding retort and hot fill processes such as set forth in any of claims 1, 24 and 25 of Amendment B in any combination of these patents.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date:

August 19th 2002

By:



Chris Farrell

14231884v1